APPENDIX A — ORDINANCE NO. 332

Benton County, Minnesota
Ordinance No. 332

AN ORDINANCE PROHIBITING PUBLIC INDECENCY AND PROVIDING A CRIMINAL PENALTY

THE COUNTY BOARD OF BENTON COUNTY ORDAINS:

Section 1. Purpose. The purpose of this ordinance is to prohibit public indecency in order to deter criminal activity, to promote societal order and public health, and to protect children.

Section 2. Findings. The Benton County Board of Commissioners makes the following findings regarding the need to prohibit public indecency:

A. Public indecency can increase the incidence of criminal activity, including but not limited to prostitution, disorderly conduct and sexual assault.

B. Public indecency can expose children to an unhealthy and nurtureless environment.

C. Public indecency can present health concerns in places of public accommodation and other public settings.

D. Public indecency can have a potentially negative impact on the value and marketability of property.

Section 3. Definitions. The following words and terms when used in this ordinance shall have the following meanings, unless the context clearly indicates otherwise:

A. "Nudity" means:

(1) The appearance of a human bare buttock, anus, male genitals, female genitals, female breast; or,

(2) A state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.

B. "Person" means a natural person twelve (12) years of age or older, including employees or agents of a public accommodation.

C. "Public place" means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial

establishments (whether for profit or not for profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by any religious, social, fraternal or similar organizations. Premises used solely as a private residence, whether permanent or temporary in nature, shall not be deemed a public place. A public place shall not include enclosed single sex public restrooms, enclosed single sex motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospital and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein; nor shall, it include a person appearing in a state of nudity in a modeling class operated by (1) a proprietary school licensed by the state; a college or university supported entirely or partly by taxation; or (2) a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation or an accredited private college.

Appendix A

Section 4. Public Indecency Prohibited. A person who knowingly or intentionally in a public setting or place:

A. appears in a state of nudity;

B. fondles the genitals of himself or herself, or

C. fondles the genitals of another person;

commits public indecency and is guilty of a misdemeanor under Minnesota law and upon conviction thereof, shall be punished by a fine of up to $1,000 or by imprisonment for up to 90 days; or both.

Section 5. Exclusion. The provisions of Section 4.A of this ordinance shall not apply to:

A. any theatrical production performed in a theater, by a professional or amateur theatrical or musical company, which has serious artistic merit; or,

B. a woman breastfeeding a child.

Section 6. Severability. If any section, sentence, or clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The County Board hereby declares that it would have adopted the section, sentence, clause, or phrase of this ordinance irrespective of the fact that any one or more sections, sentences, clauses or phrases be declared invalid.

Appendix A

Section 7. Application. Section 4 of the ordinance shall apply to any and all unincorporated areas of Benton County.

Section 8. Effective Date. This ordinance shall be effective immediately upon its passage and publication.

ADOPTED this 3rd day of July, 2001, by the Benton County Board of Commissioners.

By: s/ Duane Grandy
Chair
Benton County Board of Commissioners

ATTEST:

s/ [illegible]
Clerk

APPENDIX B — AFFIDAVIT OF BRIAN KOESTER DATED JULY 13, 2001

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Court File No. 01-CV-1239 (DDA/RLE)

SOB, Inc., a Minnesota corporation,
d/b/a "Sugar Daddy's"; Amy Chenoweth; Shannon Wiborg,
Kathryn Haskins; Mark Van Gelder;
and Mary Clifford Van Gelder,

Plaintiffs,

v.

County of Benton,

Defendant.

AFFIDAVIT OF BRIAN KOESTER

STATE OF MINNESOTA)
) ss.
COUNTY OF BENTON)

Brian Koester, being first duly sworn on oath, states and alleges as follows:

1. That I am Brian Koester, the Benton County Assessor. I have held that position for four years, and am licensed by the State of Minnesota as a Senior Accredited Minnesota Assessor. Prior to becoming the assessor for Benton County,

Appendix B

I was, since 1989, an appraiser in the Morrison County Assessor's office. I make this affidavit based upon personal knowledge.

2. As the assessor for the County of Benton, it is the responsibility of myself and my staff to keep track of all sales of property within the County. Consistent with Minnesota law, the County Assessor's office must establish estimated market value for each tax property, which relates to the taxable value for property tax purposes.

3. Attached to the materials submitted by Benton County in opposition to Plaintiffs' motion as Exhibit 11 is a true and correct copy of a three-page document which Mr. Mark Van Gelder presented at the Benton County Board of Commissioners' meeting held on July 3, 2001. This document was not prepared by the Benton County Assessor's office. I have examined the document, and at this time, can make the following comments.

4. I found a number of errors in the information set forth in Exhibit 11. All of the percentage market increases that are set forth in the document have not been calculated pursuant to generally accepted valuation methods, and thus are incorrect and inflated. In addition, all property tax parcels have two values attributed to them, estimated market value and taxable market value. Taxable market value is limited by Minnesota law to a certain percentage increase over the previous year's valuation. Based on many of the entries that I have examined at this time on Exhibit 11, estimated market value and taxable market value numbers have been mixed

together or used alternatively, which results in a higher inflationary factor than is correct. That results in incorrect percentage market increases.

5. In addition, many of the properties that are listed on Exhibit 11, during the time frame involved, were unimproved properties that then had new homes built on them. Not taking the improvement into account results in an incorrect percentage market increase. Some of the plats are lakefront properties. Some are not. Those properties would not be comparable to one another, as water-frontage properties generally have a stronger market for sale than off-water properties.

6. Many of the entries on Exhibit 11 do not reflect any recent sales. In addition, my examination of Exhibit 11 shows that where properties listed have recently sold, the percentage increase in value is, as noted earlier, incorrect. An example would be parcel .01432 (incorrectly noted as parcel .01432.06), at the address of 9435 Bay View Court. The records of the assessor show that that property sold in April, 2000, and that the percentage increase over eight-years time is actually only 30.19% instead of the 130.91% indicated on Exhibit 11.

7. Based upon my examination of Exhibit 11, and my knowledge of the real estate market within Benton County, as well as my skill, experience and training as an assessor, it is my opinion that Exhibit 11 does not establish anything regarding the effect that a certain type of business may have on nearby property values. Property values could be negatively affected by other nearby situated properties in at least two ways. First, there could be an actual decrease

in property values. Second, there could be an increase in value that is less than that of a comparable property not situated next to the property in question. My examination of Exhibit 11 shows that it is not a comparison of such comparative properties. One would look to what are termed comparative sales, which Exhibit 11 does not do.

8. Whether an activity that takes place at one property negatively affects property value of other properties may take a significant amount of time before it becomes apparent. Generally, this would depend upon how active the market is. If the number of buyers outweighs the number of sellers, the market is active, and any negative effect would take longer to show. Negative effects may not show at all during an active market, instead not developing until the real estate market has been inactive for some time.

9. Benton County currently, and has for some time, had an extremely active real estate market. Currently, Benton County is in the eighth year of an increasing and active market, reflective of the growth of the County. The last two years have had the greatest increase. Generally, there have been approximately 600 to 700 transfers a year during this active market. The year 2000 had 1,300 transfers. Similarly, new construction averages have been approximately $28,000,000 to $30,000,000 a year during this active market. For 2000, that average was approximately $56,000,000. All of these factors indicate an extremely active real estate market.

Appendix B

FURTHER YOUR AFFIANT SAYETH NOT.

s/ Brian Koester
Brian Koester

Subscribed and sworn to before me
this 13th day of July, 2001.

s/ Vicki L. Feuling
Notary Public